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Attorneys for Defendant  
 JPMORGAN CHASE BANK, N.A.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO

SELENA ARMAS, individually and on behalf  
 of all others similarly situated,

Plaintiff,

vs.

JP MORGAN CHASE BANK, N.A.; and  
 DOES 1 through 50,

Defendants.

Case No. CGC-15-543533

**DEFENDANT JPMORGAN CHASE  
 BANK, N.A.'S ANSWER TO  
 PLAINTIFF'S CLASS ACTION  
 COMPLAINT**

Complaint Filed: January 6, 2015  
 Trial Date: None Set

Defendant JPMORGAN CHASE BANK, N.A. ("Defendant" or "Chase"), by and through  
 its undersigned counsel, hereby answers the allegations contained in the Class Action Complaint  
 ("Complaint") brought by Plaintiff SELENA ARMAS ("Plaintiff") as follows:

**GENERAL DENIAL**

Pursuant to California Code of Civil Procedure § 431.30(d), Defendant denies, generally  
 and specifically, each and every allegation in the Complaint. Defendant further denies, generally  
 and specifically, that Plaintiff (or any member of the putative class that she seeks to represent) is  
 entitled to the relief requested, or that Plaintiff (or any member of the putative class that she seeks  
 to represent) has been or will be damaged in any sum, or at all, by reason of any act or omission  
 on the part of Defendant, or any of its past or present agents, representatives, or employees, acting  
 in the course and scope of their employment.

1 **DEFENSES**

2 Defendant also asserts the following defenses, without admitting any obligations  
3 regarding who bears the burden of proof or persuasion as to any one of them and prays for  
4 judgment as set forth below:

5 **FIRST DEFENSE**

6 **(Failure to State a Cause of Action)**

7 1. The Complaint and each purported cause of action contained therein fail to state  
8 facts sufficient to constitute a cause of action.

9 **SECOND DEFENSE**

10 **(Standing)**

11 2. The named Plaintiff fails to satisfy the prerequisites for class certification and,  
12 therefore, lacks standing and cannot represent the interest of others as to each purported claim.

13 **THIRD DEFENSE**

14 **(Uncertainty)**

15 3. Plaintiff's claims, and the claims of each member of the putative class alleged in  
16 the Complaint, are barred in whole or in part because the Complaint is uncertain in that the  
17 purported class definition is ambiguous and conclusory.

18 **FOURTH DEFENSE**

19 **(Due Process/Class Certification)**

20 4. Certification of a class action would constitute a denial of Defendant's due process  
21 rights in violation of the Fourteenth Amendment and the California Constitution.

22 **FIFTH DEFENSE**

23 **(Not Appropriate for Class Action)**

24 5. The Complaint, and each purported cause of action contained therein, are not  
25 proper for treatment as a class action because, among other reasons: (a) Plaintiff is an inadequate  
26 representative of the purported class; (b) Plaintiff's counsel will not fairly and adequately  
27 represent the purported class; (c) Plaintiff cannot establish commonality of claims; (d) Plaintiff  
28

1 cannot establish typicality of claims; and/or (e) the individualized nature of Plaintiff's claims  
2 makes class treatment inappropriate.

### 3 **SIXTH DEFENSE**

#### 4 **(Numerosity)**

5 6. The Complaint fails to the extent that it asserts a class action, because the putative  
6 class that Plaintiff purports to represent, the existence of which is expressly denied, lacks  
7 numerosity.

### 8 **SEVENTH DEFENSE**

#### 9 **(Statutes of Limitations)**

10 7. Plaintiff's claims are barred in whole or in part by all applicable statutes of  
11 limitation, including but not limited to California Code of Civil Procedure §§ 338, 340, and 343;  
12 and California Business and Professions Code § 17208.

### 13 **EIGHTH DEFENSE**

#### 14 **(Exempt Under California Law)**

15 8. Plaintiff, and each member of the putative class alleged in the Complaint, is  
16 exempt from the overtime requirements of the California Labor Code and the applicable  
17 Industrial Welfare Commission wage order or wage orders, including, but not limited to, the  
18 executive and/or administrative exemptions, or some combination of these exemptions.

### 19 **NINTH DEFENSE**

#### 20 **(Release)**

21 9. The claims of Plaintiff and certain members of the putative class alleged in the  
22 Complaint are barred in whole or in part to the extent said claims have been released by the  
23 individuals in question.

**TENTH DEFENSE****(Res Judicata/Collateral Estoppel)**

10. Plaintiff's claims, and the claims of each member of the putative class alleged in the Complaint, or some of them, are barred in whole or in part by the doctrines of res judicata and/or collateral estoppel.

**ELEVENTH DEFENSE****(Laches)**

11. Plaintiff's claims, and the claims of each member of the putative class alleged in the Complaint, or some of them, are barred in whole or in part by the doctrine of laches.

**TWELFTH DEFENSE****(De Minimis)**

12. The Complaint, and each purported cause of action contained therein, are barred in whole or in part by the *de minimis* doctrine.

**THIRTEENTH DEFENSE****(Unclean Hands)**

13. Plaintiff's claims, and the claims of each member of the putative class alleged in the Complaint, or some of them, are barred in whole or in part by their unclean hands and/or inequitable or wrongful conduct.

**FOURTEENTH DEFENSE****(Waiver)**

14. Plaintiff's claims, and the claims of each member of the putative class alleged in the Complaint, or some of them, are barred in whole or in part because such claims have been waived, discharged, and/or abandoned.

**FIFTEENTH DEFENSE****(Consent)**

15. The Complaint, and each purported cause of action contained therein, are barred to the extent that Plaintiff, or members of the putative class alleged in the Complaint, consented to any alleged activity or conduct.

**SIXTEENTH DEFENSE****(Arbitration)**

16. To the extent that Plaintiff and/or members of the putative class have executed agreements to arbitrate that encompass claims alleged in the Complaint, their claims are barred by their contractual agreement to arbitrate.

**SEVENTEENTH DEFENSE****(Setoff and Recoupment)**

17. If any damages have been sustained by Plaintiff, or by any member of the putative class alleged in the Complaint, although such is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of Plaintiff or the putative class members owed to Defendant against any judgment that may be entered against Defendant.

**EIGHTEENTH DEFENSE****(Accord and Satisfaction, Payment)**

18. The claims of Plaintiff and each member of the putative class alleged in the Complaint, or some of them, are barred in whole or in part by the principles of accord and satisfaction, and payment.

**NINETEENTH DEFENSE****(Adequate Remedy at Law)**

19. The claims of Plaintiff and members of the putative class alleged in the Complaint are barred, in whole or in part, because Plaintiff and the putative class members have an adequate remedy at law.

**TWENTIETH DEFENSE**

**(No Entitlement to Jury Trial - Certain Claims)**

20. Plaintiff and the members of the putative class alleged in the Complaint are not entitled to a trial by jury of certain of their claims, including their claims under the California Business and Professions Code Section 17200, *et seq.*

**TWENTY-FIRST DEFENSE**

**(No Violation of Underlying State or Federal Law)**

21. Defendant is not liable for a violation of unlawful business practices pursuant to California Business and Professions Code Section Section 17200, *et seq.*, because it is not liable to Plaintiff or the members of the putative class alleged in the Complaint for any alleged violation of any underlying state or federal laws.

**TWENTY-SECOND DEFENSE**

**(Preemption)**

22. Plaintiff's claims under Business & Professions Code Section 17200 *et seq.* are barred in whole or in part to the extent they are preempted by the federal National Bank Act.

**TWENTY-THIRD DEFENSE**

**(Improper Remedies)**

23. The claims of Plaintiff and the members of the putative class alleged in the Complaint seek improper remedies that may not be recovered pursuant to Business & Professions Code Section 17200 *et seq.*

**TWENTY-FOURTH DEFENSE**

**(Penalties Unjust, Arbitrary, and Oppressive, or Confiscatory)**

24. Plaintiff, and each member of the putative class alleged in the Complaint, or some of them, are not entitled to recover any civil penalties because, under the circumstances of this case, any such recovery would be unjust, arbitrary and oppressive, or confiscatory.

**TWENTY-FIFTH DEFENSE**

**(Action Unconstitutional)**

1           25.     Plaintiff's purported cause of action for violation of California Business and  
2 Professions Code Section 17200, *et seq.*, is barred because provisions of Section 17200 violate  
3 the provisions of the United States and California Constitutions, including, but not limited to, the  
4 due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

5                                   **TWENTY-SIXTH DEFENSE**

6                                   **(Not Willful)**

7           26.     Plaintiff and each member of the putative class alleged in the Complaint are barred  
8 from recovering penalties pursuant to, *inter alia*, California Labor Code Section 226 because  
9 Plaintiff has failed to plead facts sufficient to support allegations of willfulness.

10                               **TWENTY-SEVENTH DEFENSE**

11                               **(Conduct Reasonable and In Good Faith)**

12           27.     If Defendant is found to have failed to pay any amount due to Plaintiff, or any  
13 member of the putative class alleged in the Complaint, which allegations Defendant denies,  
14 Defendant acted at all times on the basis of a good faith and reasonable belief that it had complied  
15 fully with all California wage and hour laws.

16                               **TWENTY-EIGHTH DEFENSE**

17                               **(Due Process/Excessive Fine)**

18           28.     Although Defendant denies that it has committed or has responsibility for any act  
19 that could support the recovery of civil penalties in this lawsuit, if and to the extent any such act  
20 or responsibility is found, recovery of civil penalties against Defendant is unconstitutional under  
21 numerous provisions of the United States Constitution and the California Constitution, including  
22 the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth  
23 Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the  
24 Fifth Amendment, and other provisions of the United States Constitution, and the excessive fines  
25 clause of Section 17 of Article 1, the due process clause of Section 7 of Article I, the self-  
26 incrimination clause of Section 15 of Article 1, and other provisions of the California  
27 Constitution.

**TWENTY-NINTH DEFENSE**

**(Attorneys' Fees and Costs Unwarranted)**

29. The Complaint fails to state facts sufficient to support an award of attorneys' fees or costs.

**THIRTIETH DEFENSE**

**(Avoidable Consequences)**

30. The claims of Plaintiff and the members of the putative class alleged in the Complaint are barred, or recovery reduced, under the avoidable consequences doctrine.

**THIRTY-FIRST DEFENSE**

**(Failure to Mitigate)**

31. Plaintiff's monetary claims, and those of putative members of the purported class action defined in the Complaint, are barred, in whole or in part, because they have not appropriately or adequately mitigated their damages, if any.

**RESERVATION OF RIGHTS**

32. Defendant reserves the right to assert additional defenses as discovery proceeds and it becomes aware of additional facts and circumstances that provide the basis for additional defenses.

WHEREFORE, Defendant prays for judgment as follows:

1. That the Court deny Plaintiff's request to certify this action as a class action;
1. That Plaintiff takes nothing by reason of her Complaint;
2. That the Complaint herein be dismissed in its entirety with prejudice;
3. That judgment be entered against Plaintiff and in favor of Defendant;
4. That Defendant be awarded its costs of suit incurred herein;
5. That Defendant be awarded its attorneys' fees incurred by this action; and

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1           6.       That the Court grant such other and further relief as it deems just and proper.

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3       Dated: February 6, 2015

MORGAN, LEWIS & BOCKIUS LLP

4       By /s/Carrie A. Gonell

CARRIE A. GONELL

ALEXANDER L. GRODAN

JOHN D. HAYASHI

Attorneys for Defendant

JPMORGAN CHASE BANK, N.A.

**PROOF OF SERVICE**

*Armas v. JPMorgan Chase Bank, N.A.*  
*SFSC Superior Court Case No. CGC-15-543533*

I am a resident of the State of California, County of Orange; I am over the age of eighteen years and not a party to the within action; my business address is 5 Park Plaza, Suite 1750, Irvine, California 92614.

On February 6, 2015, I served on the interested parties in this action the within document(s) entitled:

**DEFENDANT JPMORGAN CHASE BANK, N.A.'S ANSWER TO  
PLAINTIFF'S CLASS ACTION COMPLAINT**

- ☐ **BY FAX:** by transmitting via electronic facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.; I also caused the fax machine to print such record(s) of the transmission.
- ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT MAIL:** By **FEDERAL EXPRESS**, following ordinary business practices for collection and processing of correspondence with said overnight mail service, and said envelope(s) will be deposited with said overnight mail service on said date in the ordinary course of business.
- ☐ **BY PERSONAL SERVICE:** I delivered to an authorized courier or driver authorized by First Legal Support to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.
- ☐ **BY ELECTRONIC SERVICE:** the parties listed below were served electronically with the document(s) listed above by e-mailed PDF files on February 6, 2015. The transmission was reported as complete and without error. My electronic notification address is 5 Park Plaza, Suite 1750, Irvine, California 92614. My e-mail address is pmartin@morganlewis.com.

1 [ ] **BY E-FILE:** I caused such documents to be transmitted by e-file with the Clerk  
2 of the Court by using the CM/ECF system, which will send a notice of electronic  
3 filing to the following:  
4

5 Robert Ottinger, Esq. / Ori Edelstein, Esq. Attorneys for Plaintiff SELENA  
6 THE OTTINGER FIRM, P.C. ARMAS  
7 930 Montgomery Street, #502  
8 San Francisco, CA 94133  
9 Phone: 415.262.0096  
10 Fax: 415.520.0555  
11 [robert@ottingerlaw.com](mailto:robert@ottingerlaw.com)  
12 [ori@ottingerlaw.com](mailto:ori@ottingerlaw.com)

11 [ X ] **STATE:** I declare under penalty of perjury, under the laws of the State of  
12 California, that the above is true and correct.

13 [ ] **FEDERAL:** I declare that I am employed in the office of a member of the Bar of  
14 this Court at whose direction this service was made.

15 Executed on February 6, 2015, at Irvine, California.

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17 Patricia Martin  
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